



TITLE:

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CITATION:

Hebo, Mamo. Disguised land sale practices among the Arsii Oromo of Kokossa District, Southern Ethiopia (The front of area studies). アジア・アフリカ地域研究 2007, 6(2): 352-372

ISSUE DATE:

2007-03

URL:

<http://hdl.handle.net/2433/80081>

RIGHT:

Disguised Land Sale Practices among the Arsii Oromo of Kokossa District, Southern Ethiopia

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Abstract

Since the mid-1970s, all land in Ethiopia has officially been declared as a public/state property. Consequently, peasants have enjoyed only land use rights, while land sale has been deemed illegal. Indeed, the government legislation is not the only factor to have constrained land sale in the study area. The Arsii Oromo customs too discourage the transfer of land to 'outsiders.' Nevertheless, neither government legislation nor the local customs have exercised an absolute control over land sale, and small-scale land transactions have existed under various disguises. Although most of the land sale, being an illicit practice, is conducted through oral agreements, some land transactions involve informal written papers. At a glance these written materials appear to be attempts to 'formalize' an informal activity. Closer examination, however, reveals how some important words are carefully avoided, and other words and concepts with ambiguous or dual meanings are being deliberately employed in these written deals. These disguises and ambiguities introduced into the written agreements demonstrate farmers' 'adaptive strategies' (adaptation both to the policies/legislation, and to the local customs as well) in order to conduct land transactions. Detailed analysis of these informal recordings is the core focus of this paper.

1. Introduction

In Ethiopia, the land issue constitutes one of the most contentious issues as it involves conflicting political, economic and socio-cultural interests. Land has been a key factor in the making of Ethiopia's political economy. In Ethiopia's history land has always been a major base of livelihoods for the majority; was transferred as a gift; served in lieu of salary; was snatched from those who fell out with political regimes (as a punishment which alienated the dispossessed); and was given as a reward to those who demonstrated allegiance to the political regimes. Land issues, therefore, have played key roles in the survival or demise of political regimes. Land was

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Accepted November 7, 2006

one of the top issues that contributed to the collapse of the imperial regime, and was a factor in the support earned by the military regime that succeeded it in the mid-1970's Ethiopia. In these ways, land has been and remains both a centripetal and centrifugal force in Ethiopia's political economy.

The role of land in the present political economy of the country remains tremendous. The power of land in influencing Ethiopia's political future was vividly observed during campaigns for the May 2005 election. Land topped the key contesting issues between the ruling and opposition parties. The present subject of contestation is whether to privatize the land or to maintain the current public/state ownership. In essence, these debates are over whether or not to allow the sale of land. Those who argue in favor of land privatization believe that land sale would promote economic development as it would transfer the land to those who have the means to put it under effective use, serve as collateral for landowners to get access to bank loans, promote the conservation of the land, and improve security for investment [e.g., Nega 2003; Gesesse 2003]. The government and those who support its land policy, on the other hand, maintain that land privatization would create uncontrollable land speculation, which would in turn lead to the dispossession of the desperate rural masses. This would in turn, the government believes, create a mass of unemployed and unemployable people flooding the already overstressed urban centers [e.g., PANA 2000; Jemma 2001; Ogbolu 2005].

There are two assumptions that these dichotomous arguments explicitly or implicitly advance. From the point of view of those who advocate land privatization, the assumption might be that the mere privatization of the land and the subsequent legislation to enforce it are all that are needed so that land could easily be transferred into the hands of those that could make good use of it. The government, on the other hand, assumes that if land is privatized, people could easily be taken advantage of by greedy land speculators. In order to avoid this, and any land sale for that matter, the state should hold the land as a trustee of the people, and government legislation should prohibit the sale of land. These assumptions, although they appear different, have one thing in common. Both tend to assume peasants to be passive receivers of what is decided at higher levels.

My aim in this paper, however, is not to argue one or the other assertions explained above. It is rather to examine whether privatizing land would actually accelerate land sale or maintaining state ownership of land can totally bar the practice. My argument is that both could only be partially successful, as there are other factors, beyond government legislation, that influence the trend towards land sale or otherwise. The presence of disguised land sale, however

small the scale may be, under the present policies that bar any form of land sale and the power of kin groups in influencing land sale practices constitute the basis for this argument, as I shall demonstrate in the subsequent discussion.

Currently land sale is constrained by two forces. One is external and the other is internal to the landholders. The external force is government legislation that prohibits any form of land transaction, except for contracting out the land for a specified period of time. Article 40 (3) of the Ethiopian Federal Constitution declares that, “The right to ownership of rural and urban land...is exclusively vested in the State...and land shall not be subject to sale or another means of exchange” [FDRE 1995]. This was later on made into law by the Federal Rural Land Administration Proclamation of 1997 which made land sale illegal [FDRE 1997].

Land sale is discouraged by Oromo customs as well [Hebo 2006: 37; Tolera 1997: 638]. Traditionally, according to Oromo customs, land is not a commodity for sale or transfer to non-kin. This is what most of my informants claimed when asked for their opinion on land sale issues. Arsii elders claim that selling one’s ancestral land—*kosii abba ufii gurguru*—is considered immoral, and if it occurs, it is a sign of ‘disorder’ in the family concerned. The sale of land could occur, however, in the case of extreme poverty when there is no other option available to sustain a family. Otherwise, a land seller is perceived as an extravagant and lazy person without a vision for his descendants’ future, lacking respect for his ancestors.

Seen from the point of view of Oromo descent organizations and settlement patterns, selling land to someone beyond close kinship circles causes more troubles to the potential buyer than it does to the seller. In the study area, for instance, settlements are clan-based and the proximity of houses and farm fields to each other generally indicates descent proximity of the residents. Furthermore, the land one holds is usually directly adjacent to the settlement (homestead) itself. Consequently, an ‘outsider’¹⁾ is often discouraged from buying land or settling in an ‘unwelcoming’ neighborhood. The ‘insider’-‘outsider’ continuum radiates out following the concentric circles of descent organization: from family, sub-lineage, lineage and clans to unrelated individuals.

Rural people are aware of both the customary and legal limitations pertaining to land sale. Thus, openly selling a piece of land has not been a common phenomenon. However, neither customary norms nor state legislation has exercised absolute control over land sale. Peasants

1) The term ‘outsider’ is used in this paper for an Oromo concept called *ambba*, which can be used both in its narrower and broader meanings. Its use is highly contextual as the concept can refer to wide-ranging relations depending on a situation. In its narrow sense it may refer to a non-family member or to a non-lineage member. In its broader sense it may refer to a non-clan member. Still in its broadest sense it may refer to non-Oromo.

have been engaged in manipulating both of the constraints. This paper demonstrates individual interests that induce people to sell, custom-based group interests that serve as a deterrent to individual interests, and the strategies individuals employ to deal with both customary and legislative constraints on land sale.

2. The Research Area and Methods

Kokossa District is located in southern Ethiopia, in the Bale Zone of Oromia National Regional State (Fig. 1). The district is a highland area with an average altitude of about 2,500m above sea level. Kokossa was traditionally a predominantly pastoral area. Historically, small scale barley cultivation was practiced. While enset (*Ensete ventricosum*) was mainly adopted in the 1940s, other crops such as wheat and linseed were introduced in the 1980s. Currently, livelihoods are based on mixed agriculture that combines livestock raising, enset and cereal crops cultivation, in that order of importance. The Kokossa District Agricultural Development Office claims that Kokossa has about 77,020ha of land, of which over 90 percent is estimated to be used for grazing.

The human population of the district is well over 100,000. The district is inhabited by the patrilineal Arsii Oromo people, a branch of the Oromo ethnic group that makes up about 40 percent of the Ethiopian population. The settlement pattern is scattered and based on

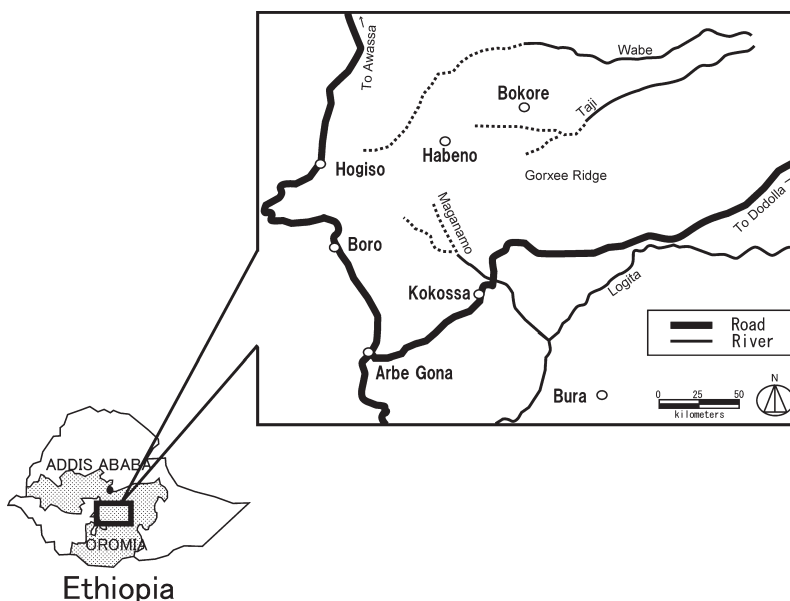


Fig. 1. Map of the Study Area

patrilineage territories. Marriage is exogamous, at least at the clan level. There are a few cases whereby people settle among their in-laws, which may appear to contradict the general principle of clan based settlements. Kinship organization of the Arsii Oromo comprises the family (*mana* or *warra*), sub-lineage (*ardaa*), lineage (*balbbala*) and clan (*gosa*) in an ascending order. Although land is legally owned by the government, each household makes decisions on how to use the land under its control. Arbitrary inter-clan settlement is frequently resisted.

This study was conducted as a part of my Ph.D. research between 1999 and 2004. The data were continuously updated through successive field trips. The last fieldwork was conducted in August-September 2004, and November 2005. Unstructured interviews, observations and collection of copies of written land transactions have been the major sources of information. Detailed studies of particular cases were also conducted. Illicit as it is, securing information on land transaction, particularly gaining access to copies of informal records was not an easy task. As a native of the study area, in most cases I used personal networks including the people involved in such transactions to secure copies of the documents and to conduct background studies of each case of land transaction.

Many of the informants agreed to show me their documents, allowed me to read and take a notes from them. They also provided me with the background stories of the cases in an unstructured interview setting. However, many of them declined my request to take the papers away in order to make photocopies in the nearby towns. To a large extent, these papers appear similar in their formats and the disguised phrases and words they employ. Copies of the deals that I was allowed to make photocopies of, are presented in this paper, followed by translation and analysis. These copies and translations can provide us with a fairly representative sample of the most common types of disguised land transactions.

3. Land Related Transactions

Despite what the people claim and government legislation dictates, land sale under different disguises and in a variety of forms does exist. Land transactions can be conducted in writing or orally. The choice between either option depends on several factors. The social relationship between the parties engaged in a land sale, which influences the level of confidence and trust between them, the size of land and the amount of cash involved, are prominent among the major factors. When the sellers and the buyers are distant relatives or non-kin, or when the land is large and the money paid for it happens to be large, the agreement tends to be written. However, whether the deal is based on a written or oral agreement, the phrase 'land sale' (*lafa gurguruu*)

is carefully avoided and replaced by such words crafted as ‘contract,’ ‘gift’ or ‘land exchange.’ In all cases, respected members of the community from both sides are called upon to witness the transaction and the agreements on which the transaction is based.

Currently, there are two major types of land-related transactions operating in the study area. These are locally known as *marga gurguruu*, literally ‘grass sale’ which I prefer to refer to as ‘grazing rights sale’; and *lafa gurguruu*, or land sale in its proper sense. Most of the discussion in this paper deals with various forms of land sale practices. However, a brief overview of grazing rights sale is needed to demonstrate that other options for land sale do also exist.

3.1 Grazing Rights Sale

Grazing rights sale involves a transfer of grazing rights over a given plot of land for a certain amount of cash and for a specified period of time. Grazing rights sale is a routine practice in the study area and unlike land sale, there is no specific government-based regulation that permits or prohibits the practice. The practice appears to be a local innovation emerging from the needs of diverse sources. The profile of the people who sold grazing rights showed that most of them were livestock-poor peasants who possessed more land than they needed for the grazing of their own cattle. On the other hand, their clients were livestock-rich households who possessed more livestock than their own land could support. These households purchased pasture from livestock-poor farmers who owned enclosed or fenced lands which were well managed to grow good quality grasses. The practice has become so common that some of the families I interviewed have established grazing rights sale as an essential element of their livelihood. The land sellers and land buyers thus have established vital symbiotic relationships out of their respective needs.

The contract period varied from case to case. It could be as short as two months or as long as a twelve months (Table 1). A person may purchase a grazing right for a year and manage the grass himself for use in different seasons, depending upon the size of the land and the number of livestock to be grazed at a time. Prices of a pasture per unit of land area also varied according to a number of factors. The quality of the grass, judged on the basis of the local land classification and the grass species that dominates a land—such as *araddaa*,²⁾ *wiixaa*,³⁾ and *ciinaal/caffaa*⁴⁾—greatly influenced the price. *Aradaa* and *wiixaa* lands, or a mixture of these two types, are

2) *Araddaa* is a land usually around settlements and well fertilized through the rotation of cattle kraal, and its grass species dominated by *Coqorssa* (*Eleusine jaegeri*) and *Alandu* (*Cyperus papyrus*).

3) *Wiixaa* (*Hyparrhenia rufa*) dominates well drained land which is not disturbed by cattle kraal or which is not converted into farm fields.

locally preferred and fetch better prices than *ciienaa* and *caffaa* lands.⁵⁾ Another factor that influenced the price of pastures was the rapport established between the ‘landowner’ and his ‘tenant.’⁶⁾ In the course of the fieldwork, I observed several interesting cases whereby peasants sold grazing rights over the same size and similar quality of pasture at significantly different prices to different individuals at different times (see Table 1). This is mainly the result of a mutual relationship that has been established between a ‘landowner’ and his ‘regular tenant,’ or of kinship proximity between the parties.

Prices of grazing right per hectare of land ranged from as low as Birr⁷⁾ 3 to as high as Birr

Table 1. Cases of Grazing Rights Sale

Case	Land size (ha)	Duration of contract (month)	Price (Birr)	Price/ha. month	Grass type (local land classification)	Year of sale
A-1	1	7	150	21.42	<i>wiixaa, araddaa</i>	1999
A-2	1	7	130	18.57	<i>wiixaa, araddaa</i>	2000/2001
A-3	1	6	60	10.00	<i>wiixaa, araddaa</i>	2002/2003
B-1	1/2	6	70	23.33	<i>araddaa</i>	2000
B-2	1/2	6	60	20.00	<i>araddaa</i>	2001/2002
C-1	1	12	150	12.50	<i>araddaa</i>	2000/2001
C-2	1	5	80	16.00	<i>araddaa</i>	2001
C-3	1	11	120	10.90	<i>araddaa</i>	2002/2003
D	1	7	80	11.42	<i>wiixaa</i>	2001
E	1	7	90	12.85	<i>wiixaa, araddaa</i>	2000/2001
F	1	6	45	7.50	<i>wiixaa, araddaa</i>	2001
G	1/2	12	90	15.00	<i>wiixaa</i>	2001/2002
H	1/2	4	60	30.00	<i>maasaa midhaan, irra bade</i>	2001
I	1/2	2	60	60.00	<i>araddaa</i>	2002
J	1	2	100	50.00	<i>ciienaa, araddaa</i>	2002
K-1	5	12	200	3.33	<i>wiixaa, araddaa</i>	2000/2001
K-2	5	12	200	3.33	<i>wiixaa, araddaa</i>	2002/2003
L	3/4	4	50	16.66	<i>wiixaa, caffaa</i>	2002
M	1/4	6	30	20.00	<i>araddaa</i>	2001/2002

Source: Field research, 2001, 2002.

Note: Cases A, B, C, and K had sold grazing rights over the lands in different seasons/years either to the same or different clients.

4) *Caffaa/ciienaa* (*Cyperus dichostachyus*) dominates water-logging lands. This grass type is not preferred, particularly during the rainy season, as it can be easily damaged by livestock hooves thereby reducing the length of time to be grazed.

5) For more Oromo names of the plants species mentioned, see [Kelecha 1980].

6) ‘Landlord’-‘tenant’ relations should not imply that the landlord is better off than his tenant in terms of wealth and in view of the local perception of the poor and the rich. Indeed, the tenants are considered richer by local standards because they usually possess more livestock than their landlords.

7) Birr is a unit of Ethiopian currency. At official exchange rate Birr 8.69=1 USD

50 (Table 1). Without sufficient explanation, this gap appears to be too big to comprehend. Beyond the size of the land and the quality of the grass and the social relationship between the buyers and the sellers, as well as other specific agreements between the parties, influenced the price. For example, Case K in Table 1 sold grazing rights over 5 ha of land for only Birr 200 for one year, which calculates to slightly over Birr 3.33 per hectare per month. This appears to be the cheapest deal from among the cases. A careful examination of this grazing right sale revealed that other factors were involved beyond the mere business deal. I found out that the seller had reserved full grazing rights over the same land for the five heads of cattle he owned. The parties also agreed that the buyer would use the seller's cattle kraal and by implication fertilizes the land. Furthermore, the seller and the buyer are from the same clan which also played a part in the lowering of the price.

The involvement of these non-market forces in grazing rights sales makes it difficult to argue whether the value of grass per unit of land is increasing or decreasing. Nevertheless, from the perception of the local people and from my observation of intense competition among peasants over grazing rights purchase, one can assert that the demand for pastures is increasing. This claim can also be supported by two cases that involved disputes over grazing rights transactions. In both cases the landholders sold grazing rights over the same land to two different clients simultaneously. In both cases the second buyers knew that grazing rights over these lands were already sold, but they desperately needed the grass and offered better prices than the initial buyers had paid.

Grazing is a predominant land use pattern in the area. The progressive shrinking of 'communal' grazing lands and the declining land per household might have caused the increasing demand for grazing rights purchases. The presence of a huge livestock population definitely drives up the demand for grazing land. In a district of slightly over 77,000 ha in area, there were over 500,000 livestock, mainly cattle, horses, sheep and goats [ABRDP 1999: 44]. Since land ownership and cattle ownership may not correlate, vital symbiotic relationships emerge between the people owning different resources needed by each party.

Beyond this, selling the 'grass' can be conceived of as a strategy to solving a number of problems. The practice could help a landholder meet his immediate needs without risking permanent loss of the land, as in the case when he might be forced to dispose it. Some of the lands sold for grazing in my case studies were suitable for cultivation, too, but the landholders did not own the oxen needed to engage in cultivation. Other lands were steep slopes or seasonally water-logged lands which were not suitable for cultivation. Grazing rights sale could help

improve both limitations. It could also be viewed as dealing with the limits imposed on land sale by local customs and State policies. Thus selling the grass, not the land itself, can be conceived of as an adaptive strategy to a number of limitations faced by landholders.

3.2 Land Sale

A survey conducted on the means of land acquisition in the study area [Hebo 2006] produced multiple means of land acquisition (Table 2). Among these multiple means, land acquisition by purchase appeared interesting as the practice has officially been considered illegal. Although I knew since 1999 when I started research in Southern Ethiopia that some people sold land, it was this survey that provided me with concrete information. Out of 100 household heads interviewed, 8 acquired land through purchase or a combination of purchase and other means of land acquisition. Although this figure is not significant compared with other means of land acquisitions, it revealed the existence of the practice amid an official ban on it. However, I did not pay much attention to land sale practices at this stage of the research since my focus was on the identification of multiple means of land acquisitions. It was in my subsequent field trips that my interest in land transactions took shape.

Given that clandestine land transactions exist, my particular interest was oriented towards written land transactions. Similar dubious informal records of land sales by peasants are well documented and analyzed for some other parts of Africa [Benjaminsen and Lund 2003; Mathieu *et al.* 2003; Andr  2003; Lavigne Delville 2003]. However, this dimension of land related research is lacking in Ethiopia, to the best of my knowledge. The covert contracts people undertake, the types of lands which are susceptible for disposal, kinship relationship between the people who frequently engage in land transaction, and strategies people employ to circumvent

Table 2. Means of Land Acquisition by 100 Households Heads

Means of land acquisition	No. of households
Inheritance	52
Inheritance & land distribution	26
Land distribution	10
<i>Inheritance & purchase</i>	5
Gift	3
<i>Inheritance, land distribution & purchase</i>	2
Inheritance & gift	1
<i>Purchase</i>	1
Total	100

Source: [Hebo 2006: 66]

the State, as well as the customary constraints, have hardly been discussed.

In what follows, the paper analyzes cases of written land transaction in conjunction with detailed background studies. The background studies were necessary because, without such studies, only a part of reality would be gleaned from the records alone. Written land transactions were deliberately left vague and employed ambiguous statements or even recorded substantively different stories from the ones agreed upon between the parties involved.

Peasants have adopted a number of innovative ways of dealing with prohibitions placed on land sale and land transfer. Probably one of the most paradoxical of these innovations is the informal recording of land transactions. It appears paradoxical because peasants seem to attempt to legalize an illegal activity or formalize an informal deal. Taken literally these written papers look like formal agreements. Closer analyses, when combined with careful background studies of these deals, provide immense information on the manipulations, misinformation, and deliberate omissions of certain terms or the use of disguised arrangements.

Currently there are three major ways through which people could undertake disguised land sale. First, people may claim to have sold property such as perennial crops and planted trees. Land, however, is not mentioned but can only be implied. Second, people engage in disguised land sale contracts, locally known as *kontraata*. Again land is not directly mentioned but takes on a different 'identity,' and is mentioned as a farm field. These two ways are practiced either alongside each other or separately. In both cases, transactions are struck either in the presence of some witnesses by way of oral agreements or through informal recording of the transaction which contains signatures of the seller and the buyer as well as by witnesses.

Third, land can be sold disguised in what is known as 'land exchange,' whereby individuals claim to have swapped lands. Land exchange, in its formal sense, is an activity officially encouraged to reduce farm fragmentation. However, the same system is being employed to undertake clandestine land sale. In the following discussions I will analyze samples of some written agreements of disguised land sales. Three informative case studies will reveal how the system works and the complexities and innovations involved in land transactions.

a) *'Contracting out fields' for unknown duration and selling perennials as they stand: Complexities involved in disguised land sale*⁸⁾

The following case of disguised land sale 'contract' and the sale of crops and trees on the land may illuminate on how the systems I mentioned above actually operate.

8) This case was preliminarily discussed in [Hebo 2006: 68-70].

Date: July 12, 2000

I, [name withheld and abbreviated as Mr. D],⁹⁾ who resides in Bokore PA,¹⁰⁾ have sold bamboo trees and 46 eucalyptus trees, which I have planted in my *kaloo* (fence or fenced land) to him [Mr. H]. I also sold my enset plants on my *maasaa* (farm field) to him. And also, I granted my *maasaa* on *kontraata* (lease or contract) to him [Mr. H]. In return I received Birr 500 from him. I hereby confirm the above statements by my signature in the presence of witnesses....

This land sale took place between two individuals (hereinafter Mr. D and Mr. H).¹¹⁾ They belong to different clans (*gosa*) while the land at the center of the deal is located within Mr. H's *gosa* territory. This land was allocated to Mr. D in the mid-1980s by the then Tulu Gaduda PA administration. Mr. D had fenced the land and planted bamboo and eucalyptus trees on it, marking all the boundaries of the fence. He also planted some enset crop but most of it was already harvested by 2000. He had been using most part of the former enset field as a barley field (*maasaa garbu'u*).

Being a resident in the territory of a clan to which he did not belong, Mr. D claimed that he was not leading a peaceful life. He claimed that his *ollaa* (neighbors) had been intimidating him ever since he settled on the land. The intimidation was intensified after the downfall of the Derg,¹²⁾ which finally forced him to sell the land and move to his lineage territory. Nevertheless, he had to conduct the land sale within the context of what could be acceptable to the government structures. Disguised land sale contract is one of these possible strategies to make the deal appear legal, as the translation and analysis of the agreement revealed. The buyer, the seller and the three witnesses at the scene confirmed the agreement by putting their signature (fingerprints) on the piece of paper. The parties made intricate transactions and concluded on these simple handwritten informal notes. However, the text lacks many elements of a formal deal.¹³⁾

9) All individuals involved in land sale practices of the cases presented in this paper are referred to by the initials of their first names.

10) PA (Peasants' Association) is the lowest level in the hierarchy of government administrative structures in Ethiopia.

11) It is not always easy to obtain copies of these informal recordings of land transactions. Paradoxical as it may seem, the parties who record the deal to apparently formalize it actually keep it informal when they decline to share the piece of paper on which they put their words and signatures. I used personal relations with respondent to obtain materials both to read and take a note. In this particular case Mr. H allowed me to read and take a note from a copy of the agreement.

12) Derg was the military regime (1974-1991) that deposed the imperial regime in 1974, and ruled Ethiopia under the banner of socialism.

The three major elements in the deal, that is, the trees surrounding the farm field, the enset plants on a part of the farm field, and the farm field itself could all be controversial depending on how one treats them. All these elements could have implicit allusions. First, bamboo is a naturally fast multiplying plant. It can also be easily transplanted and spread over a wider area to claim more land in a short period of time. In the text, however, its number was not indicated while the number of eucalyptus trees was clearly stated. Selling eucalyptus as standing/living trees is another problematic point. Eucalyptus stumps regenerate after the mature trees are harvested, which means a person may use the same land for decades tending the trees on it. Above all, there is no indication in this informal record as to where the land planted by trees ends and where the farm field begins. In sum, it was not stated or even indicated whether the buyer would harvest the trees and vacate the land or he would use the land as long as the bamboo and eucalyptus trees exist on it.

Enset is another problematic crop as far as landownership is concerned. The plant is perennial and it takes almost a decade to fully mature in this cool highland area. Furthermore, an enset field can be kept functioning for decades, since inter-planting younger enset is possible without completely harvesting the mature ones. However, in this informal written material, this was not mentioned. Third, and perhaps the most important is that no period (duration) of ‘contract’ was specified on the piece of paper. Mr. D only said he gave his *maasaa*—farm field as opposed to the land—on ‘contract’ to Mr. H. Nothing was stated as to when the ‘contract’ would end. Here Mr. D carefully avoided the use of two important words: (1) sale (which was replaced by ‘given on contract,’ and (2) land (supplanted by *maasaa* or farm field). Moreover, Mr. D just had recorded that he received Birr 500, from which one could hardly understand the particular value of each of the three elements included in the record; that is, the farm field, the enset crop and the trees.

Several points need further analysis in this case. At this juncture, I focus on the following two points. (1) Why was the record in the case above deliberately written in such vague language and why did the parties fail to put on paper some important aspects of the deal? (2) Why do people tend to sell the land they acquire through land redistribution?

Emphasis on the farm field and plants, rather than the land itself, and a focus on the contract instead of sale were all deliberately introduced in order to ‘adhere’ to State policies. The

13) Mathieu *et al.* [2003], presents a very interesting analysis of similar land transactions activities and subsequent informal recordings, drawing their cases from Burkina Faso. They note how peasants deliberately avoid certain elements of the deal from recording.

parties in this deal knew that land sale is illegal. At the same time they wanted to semi-legalize their deal, which appears paradoxical. But the whole idea of such an informal recording was not to legalize the transaction as such. Nor was it intended to protect the buyer from a breach of the contract by the seller. Breach of contracts could be better protected by the local people who were at the scene when the transaction took place than the paper itself. The paper is intended to give some protection to both the seller and the buyer against the possible threat from the PA administration. And avoiding such phrase as 'land sale,' and not putting the duration of the 'contract' on paper could leave some windows for both the buyer and the seller should they need to negotiate with the PA administration.

This case and several other cases I observed throughout the fieldwork period revealed that selling land that had been acquired by inheritance appeared to be very infrequent. A few people who sold the land they inherited did so to those in the family circles, not to 'outsiders.' Almost all confirmed land sale cases and interviews with farmers disclosed that: (1) people tended to sell the land they received through formal/informal land redistribution, particularly when they were given the land which did not belong to their own lineage; and (2) people tended to sell the land they obtained through land distribution to those who claimed customary ownership over the same land. This may arise from two sources of insecurity. On the one hand, individuals who received land outside of their lineage territory or in an 'unwelcoming' neighborhood would feel insecure because of actual or potential intimidations and threats from those who would claim customary rights over the land. On the other hand, formal channels through which a person may acquire a piece of land lack continuity and stability. As a result these channels would not be able to provide sustainable security and protection to those people who received land through them.

b) *'Exchanging lands' for no apparent reason?*

The following case presents another form of land sale; this time disguised as the 'exchange of lands.' This, as is the case with 'contract,' is an attempt to make a land sale activity closer in appearance, though not in content, to what is officially permitted or accepted. Land exchange in its real sense is encouraged by the government. The aim is to help peasants consolidate scattered farms and/or holdings. It is within this framework that peasants have found a legal loophole to sell land disguised as land exchange. The written agreements that confirm these 'land exchanges' contain a number of ambiguous statements and phrases. They also make the government a party to such informal written deals. I shall provide a verbatim translation of such an informal written document with a detailed analysis. Before that a background of this case is in order, as it offers

insights into a web of interests in land and the role of local social organization in influencing the direction land sale should take.

Mr. R was allocated land which belonged to his cousin, Mr. G, by a Peasants' Association (Fig. 2). He had been using the land for cereal crop cultivation. In late 2004, Mr. R attempted to sell this land to a person of the same clan as himself but of a different lineage. This caused uproar among Mr. R's close relatives, who are also Mr. G's relatives, who 'cursed' him for trying to transfer the land to an 'outsider.' In the meantime, Mr. D, a nephew of the original land owner (Mr. G) had confronted the potential buyer and warned him not to venture into this 'dangerous business' and to refrain from buying 'family land.' This strategic intimidation of the potential buyer thus slowed down the negotiations. At the same time, Mr. R's relatives convinced him to refrain from attempting to transfer the land to an 'outsider.' They urged him not to sell the land but to a close relative. Mr. D was a close relative who offered to buy the land. Mr. D claimed that he offered to buy the land in order to 'protect the honor of the family, and to protect it from being transferred to an outsider.'

In order to make this transaction appear 'legal,' however, the deal had to be written not as a land sale but as a 'land exchange.' The deal claims that Mr. R transferred land to Mr. D who in turn transferred another piece of land in exchange. It was indicated in the paper that Mr. R and Mr. D were neighbors and had adjacent pieces of land. However, the land Mr. R transferred to Mr. D was actually equally distant from both parties. The only difference was that the land at the center of the deal was closer to and a part of Mr. D's paternal uncle's land, that is, Mr. G (Fig. 2).

This agreement of land transaction, as many of the land transactions in this area tend to

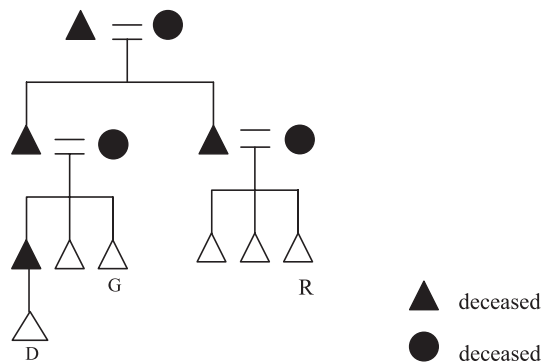


Fig. 2. Kinship Relations of the Individuals Engaged in the Disguised Land Sale

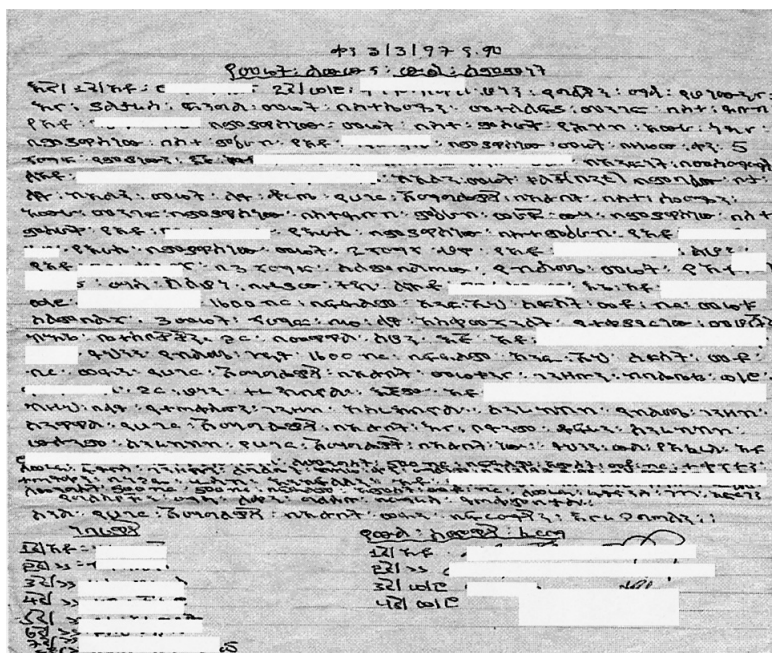
G: Original owner of the land, R: Allocated the land via PA, and later sold the land disguise land exchange, D: Bought the land disguise land exchange

do, gives some appearances of being a formal deal. This document, called ‘an agreement of land exchange,’ contained the date recorded in the Ethiopian calendar 1997-3-3 (November 12, 2004); names and signatures of the parties engaged in the agreement and of the witnesses as well; details of the land such as the size, location and boundaries in all directions; and the amount of money involved and obligations that the parties entered into, indicating as to what would happen in case any of them fails to abide by the agreement.

The title of this agreement clearly indicates that the parties engaged in a ‘land exchange.’ The boundaries of the exchanged lands were clearly indicated either in terms of physical features or as being bounded by the neighboring fields whose owners’ names were mentioned in the paper. The size of the lands was also indicated in a local measurement. Those who signed the deal as ‘observers’ were consistently referred to in the text as ‘local elders present’ not as ‘witnesses.’ The implication is that these ‘local elders’ are considered as the guardians of such an agreement, preventing either party from breaking the agreement, rather than being witnesses in its formal sense. The paper, however, contains some vague and ambiguous elements and some omissions. The money involved in the exchange was not sufficiently explained, for instance. It was simply stated that it was paid to balance the differences in the size of the ‘exchanged lands’ and nothing was mentioned about the quality of the land, which could make a difference. While Mr. R’s land was registered as a mainly farm field (*maasaa*), Mr. D’s land use type was not indicated.

The most important omission was that no explanation was given as to why the parties agreed to balance the difference in cash where Mr. D had sufficient land to fully compensate Mr. R in exchange. Another important omission was that, the reason for the parties engagement in ‘land exchange’ was not indicated anywhere in the agreement. These omissions could have implications for the deal’s capacity to be a formal and binding one. In this agreement it is explicitly stated that Mr. R and Mr. D are neighbours and they share land boundaries. Mr. D transferred the two *timad* of land to Mr. R’s land along their common boundary, whereas the land Mr. R transferred to Mr. D is equally distant from the residences of both individuals. This may defy the government’s objectives for allowing land exchange.

Thus, taken literally this ‘land exchange’ happened for no apparent reasons. It is only a closer review of the background, beyond the written document, that reveals the true nature of such a deal. The two individuals engaged in a complete business transaction, in that the value of the land was negotiated and the money was accordingly transferred. But that was not acceptable from the point of view of the government’s policy. Thus, the agreement (an informal record)



Date: 3/3/97 Ethiopian calendar [November 12, 2004]

We, Mr. R and Mrs. W [a man and his wife, hereinafter Mr. R], have agreed to exchange our *private farm field* and a plot of uncultivated land which measures five *timad** [about 1.25 ha], with a land which belonged to Mr. D and Mrs. S [a man and his wife, hereinafter Mr. D] that measures two *timad*.... Mr. D compensated Birr 1,600 to Mr. R since the latter's land is larger by three *timad*... We [both parties] agreed to the exchange of the lands and the *compensation in cash for the difference in the size of the lands*, and conducted our agreements in the presence of local elders. We made marks on the lands [that we have exchanged] to indicate the boundaries along all directions. If we, [Mr. R and Mrs. W] break this agreement, we will pay a fine of Birr 500 to the government through the district finance office. And we agreed to be charged as swindlers. We also agreed to pay back the money we received from Mr. D. The interest on the money will be worked out based on the situation of local business conditions. We, [Mr. D and Mrs. S], also agreed that if we break this agreement we will vacate the land and return it to its owners.... We also agreed to pay a fine of Birr 500 to the government through the district finance office in case we break this agreement. We [both parties] agreed on what is written above and signed this agreement with our free will and full understanding in the presence of local elders (emphasis added).

Present

signatures of those entered into agreement

Fig. 3. A Copy of 'Land Exchange' Disguised Land Sale Agreement

* *Timad* literally refers to a pair of oxen, and also used as a unit of land measurement. A *timad* of land is a size of land that can be farmed with a pair of oxen a day. Four *timad* is equivalent to one hectare.

had to be made in a completely different manner and the deal was written as a 'land exchange.' Moreover, Mr. D had to make a symbolic land transfer to Mr. R. The land was of inferior quality compared to Mr. R's but the size of the land as mentioned in the agreement appeared to be true.

The inclusion of an unrepresented party (the government) in their agreement is another interesting element of this deal. The amount of fine to be paid to the government in the case of a breach of the agreement by either of the parties was explicitly stated along with the name of an office where that money would be deposited. These and other overtly legal words and phrases are directed at the government structures and intended to make the deal appear legal. It appears that the parties tried to appease the government's structures, particularly the PA leaders and district officials, by employing 'formal' words for the informal practices they undertook.

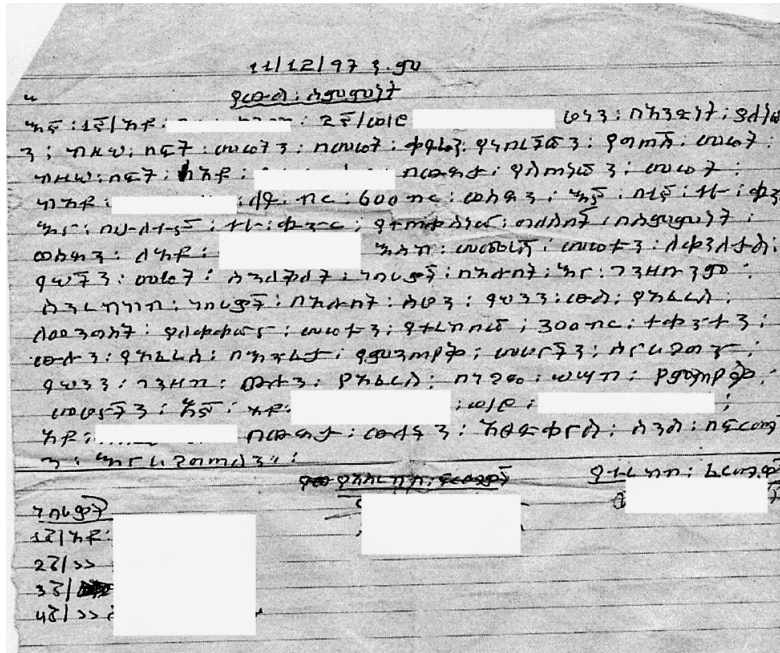
This land transaction also revealed other complexities involved in land tenure in this area. It indicates that land is so valuable that it can even tempt close kin into using a government structure to grab land from one another. Mr. R gained the land which belonged to his cousin by employing PA administration. At the same time, the case revealed the power of kin to keep the land within the inner kinship circle, even when that means buying the land from a 'corrupt' member who is predisposed to transfer the land to whoever can pay for it. This and other case studies and interviews with the local people suggest that kinship based organization, particularly extended families and sub-lineages, have more power than the local government officials in deterring land sale to some degrees and in influencing the direction land sale should take when they occur.

We have seen in this case that relatives of the land seller had the power to intimidate and deter an 'outsider' buyer and influenced the seller to transfer the land to an acceptable 'insider.' This is reinforced by the settlement pattern whereby a man at one's doorstep is most likely to be the closest related person. The government structures and policies are usually subject to manipulations and maneuvering by the peasants who have never been a part of the processes of formulating the policies, and where state structures at all levels represent the state not the peasants.

c) *'Handing over the land/returning the land to the state' but receiving money*

The third disguised land sale, which happened between the same individuals I presented above, discloses more complexities that develop around the land.

Only ten months had elapsed since Mr. R and Mr. D entered into the agreement discussed above. Mr. R was again rumored as negotiating with the same person to whom he attempted to



Date: 11/12/97 Ethiopian calendar [August 17, 2005]

We, [Mr. R and Mrs. W], have *returned the land* to Mr. D, which we had received earlier in land exchange with him. We gave him this land for ever and received Birr 600 in return. We did this in the presence of local elders. Any of us who may break this agreement, either the one *who returned the land to the government [reverted to the public pool]* or the one *who received the possession of land* will be fined with Birr 300 [to the government]. Any of us who breaks this agreement compensates the injured by paying double the amount of money we have received and its interest being calculated based on the local business circumstances. We [both parties] have signed this agreement on our free will (emphases added).

Present signature of those 'who handed over' [the land] signature of the 'receiver' [of the land]

Fig. 4. A Copy of Disguised Land Sale Agreement

sell the land discussed earlier to sell the two *timad* of land he received in a 'land exchange' from Mr. D. On hearing this rumor, Mr. D was reportedly so upset that he was ready to physically engage Mr. R. The problem with this plot of land is that it is located between Mr. R's and Mr. D's homestead. If Mr. D did not act, an 'outsider' with whom he was not on good terms after their confrontation on the previous land sale case would hold land at his doorstep. This would be a recipe for conflict. Mr. D also mentioned to me that he explicitly told Mr. K, who was

negotiating to purchase the land, that 'he should buy such a land if he wants to put himself in endless trouble.' Mr. K again backed down and his negotiation with Mr. R was stalled. Subsequent intervention by the sub-lineage to which both Mr. R and Mr. D belong convinced Mr. R to sell the land to Mr. D again.

Mr. D claimed to have every right to buy such a piece of land since he is a closer relative of Mr. R and since the land at the center of controversy originally belonged to himself. Consequently, the agreement was concluded in the spirit of these negotiations. Nevertheless, the paper signed by the two parties and by four local 'elders,' three of whom also observed the previous agreement of 'land exchange,' was written, as usual, in a completely different spirit and contained a number of disguises and ambiguities.

This deal was simply entitled 'agreement.' Nevertheless, there are some fundamental omissions and differences when compared to the former agreement that took place between the same individuals. While in the first agreement there were 8 local 'elders' who witnessed the agreement, in the subsequent case there were only four people, three of whom were also witnesses of the former agreement. In this agreement two conflicting statements are evident. On the one hand, Mr. R and Mrs. W claimed that they returned, indicating no sale, the land to Mr. D. Yet they received Birr 600 in return. The 'return' of the land was recorded as permanent. On the other hand, it has been indicated that Mr. R released the land for the government (reverted it to the status of public property). In this case it appeared that Mr. D just received the land as a trustee of the public, or on behalf of the state. This defies the first statement and contradicts the point of receiving money for such a practice. As was in the preceding case, the parties made the government a party to their agreement, and agreed to be fined Birr 300 and transfer the money to the government.

This case supports the major arguments I have made regarding the cases discussed earlier. Here again, the intervention and the power of kin groups in influencing land sale is apparent. The disguises and ambiguous statements used in this case add only to the evidences of innovation and strategies that peasants employ to deal with constraints on land sale, particularly those stemming from government legislation and policy.

4. Conclusions

The case study material and associated discussion presented in this paper shed some important light on the emergence of a symbiotic relationship between the people who possess different resources—between land owners and cattle owners—that have given rise to a thriving mechanism

for grazing rights sale. This relationship is shaped around the land whereby landownership and cattle ownership may not necessarily correlate. Divergent needs have brought about the establishment of 'patron-client' relationships whereby landowners, though poor from the local perspective, act as patrons to large livestock owners (locally considered rich) who appear as clients. This relationship is a reverse of the traditional perceptions of and relationships between the poor and the rich. Land is emerging, thus, a medium that breaks the traditional perception of and relationships between the haves and the have-nots.

Evidence presented in this paper reveal that merely the presence of policies and legislation that prohibit the sale of land may not guarantee the suppression of land transactions. Peasants have circumvented and maneuvered those policies in order to undertake land transaction. Such adaptive strategies as disguised land sales by claiming to have sold plants (crops) and trees, to have transferred 'farm fields on contract (*kontraata*), and claims such as land exchange, and grazing rights sale constitute some of the ways to transfer land without risking the actions of government structures.

The written agreements that people engage in are found to be innovative ways to keep the government policies and legislations at arm's length. The ambiguous concepts employed in these written materials and the attempts to introduce different stories than the ones agreed upon were all designed to beat the state systems. The agreement itself may be protected more by the local elders and local customs than the papers themselves.

The paper also demonstrated that there exist competing jurisdictions, norms and organization (local versus state) that influence the possession of land, its transfers, and transactions at various levels. The power of local social organization in deterring land sale or in influencing its direction was found to be significant, as compared to government structures. In essence, local social organization, particularly members of the extended families and sub-lineages, have a strong say not in barring land sale as such but in influencing to whom it should be sold or who should have preference in buying a given piece of land. This priority access is determined not by the ability to pay, but by the customary rights (social stake) one may claim over land. Thus, families and minimal lineages have strong say in influencing the direction of land sale. In so doing, they manage to keep the land within 'acceptable' circles of kin groups.

Still we could also deduce from these case studies, that land rights obtained via government structures tend to be unstable and susceptible to various forms of transactions. People tend to sell the land they occupied or were given through the PA administration. Such land is sold not to anyone offering the best price, but to the original owners who claim custom-enforced priority

over it. Understanding of these complexities and interests involved in the land are vital to successful and fruitful debates, policies and legislation pertaining to land.

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